REMARKS

Favorable reconsideration of the application is respectfully requested in light of the amendments and remarks herein.

Upon entry of this amendment, claims 1-52 will be pending. By this amendment, claims 1, 9, 16, 20, 22-25, 29, 34, 40, 46, 49, 50, 51 and 52 have been amended. No new matter has been added.

§ 101 Rejection of Claims 46 – 52

In Section 3 of the Office Action, claims 46 – 52 stand rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

Claims 46 and 49-52 have been amended to address the rejection. Specifically, these claims have been amended to incorporate the terms, "licensee computer," "licensor computer" and "distributor computer." Claims 47 and 48 depend from claim 46, and thus incorporate the amended terms.

Accordingly, it is submitted that the rejection of claims 46 – 52 based upon 35 U.S.C. §101 has been overcome by the present remarks and withdrawal thereof is respectfully requested.

§112 Rejection of 1 – 15

In Section 4 of the Office Action, claims 1 – 15 stand rejected under 35 U.S.C. § 112, second paragraph, for being indefinite for failing to particularly point out and distinctly claim the subject matter applicant regards as the invention.

Claims 1 and 9 have been amended to address the rejection. Specifically, these claims have been amended to incorporate the terms, "order accepting process system," and

"consideration determining process system," in compliance with the Examiner's interpretation. Claims 2-8 and 10-15 depend from one of claims 1 and 9, and thus, claims 2-8 and 10-15 incorporate the amended terms.

Accordingly, it is submitted that the rejection of claims 1 – 15 based upon 35 U.S.C. §112, second paragraph, has been obviated and withdrawal thereof is respectfully requested.

§ 102 Rejection of Claims 1 – 17, 20 –24, 34 – 37, 40 – 43, and 46

In Section 5 of the Office Action, claims 1 – 17, 20 –24, 34 – 37, 40 – 43, and 46 stand rejected under 35 U.S.C. §102(b) as being anticipated by Freeny, Jr. (U.S. Patent No. 4,528,643; hereinafter referred to as "Freeny").

In the Background section of the Specification, it was indicated, "[i]n general, the largest part of total sales is achieved during the several weeks immediately after the first date of sale after an article, such as recording media (CD-ROMs) containing the computer-executable is released. Thus, when the articles are out of stock during this period, valuable selling opportunities are lost." *Background, page 3, line 22 to page 4, line 1.* "However, since the wholesaler and the retailer purchase the articles in stock at a price including the consideration to the added value, it is not financially advantageous to increase the number of articles in stock since this can cause a rapid increase of assets." *Background, page 4, lines 4-6.*

It was further indicated, "[a]lthough for certain software products, such as games or music, the largest part of total sales is often achieved within several weeks from the date the first version is released, requiring a software publisher to maintain high initial stock levels that include the royalty or license fee added value consideration can be burdensome. Furthermore, the economic risk is an additional burden that can be considerable, since the unsold articles result

in losses, not just of the manufacturing cost, but also of the added value consideration." *Background, page 5, lines 9-15.*

To address the above-described shortcomings of the conventional sale management and article distribution system in which initial stock levels that include the royalty or license fee are required at the increased risk of unsold articles, embodiments of the present invention include system, server, method and program claims for managing the sale of an article wherein this risk is minimized.

In particular, the computer network system for managing the distribution of an article, as presented in claim 1, as amended herein, includes:

> *an order accepting process system* accepting an order for the article from a purchaser; and
>
> *a consideration determining process system* functionally coupled to the order accepting process system and determining a value added consideration due to a value added provider of the article, based on information related to the accepted order,
>
> *wherein* the article has been manufactured prior to the acceptance of the order.

(emphasis added)

Accordingly, in one aspect of claim 1, the computer network system for managing the distribution of an article includes an order accepting process system accepting an order for the article from a purchaser . . . wherein the article has been manufactured prior to the acceptance of the order.

By contrast, Freeny describes a customer entering payment information for an article at a point-of-sale location, then having the information sent directly to the owner of the information, before a sale of a recording (or article) is authorized. *Freeny, col. 2, line 66 to col. 3, line 24.* In other words, Freeny discloses manufacturing the articles for sale after the owner of the

information has accepted the order, received payment, and authorized reproduction of the articles. *See Freeny, col. 3, lines 25-39.* Therefore, Freeny fails to teach or suggest a computer network system for managing the distribution of an article that includes an order accepting process system accepting an order for the article from a purchaser . . . wherein the article has been manufactured prior to the acceptance of the order. Therefore, Freeny fails to teach or suggest all the limitations recited in claim 1.

Based on the foregoing discussion, it is submitted that claim 1 should be allowable over Freeny. Independent claims 9, 16, and 20, 22, 23 and 24, as amended herein, closely parallel and contain substantially similar limitations as those recited in, independent claim 1, and thus claims 9, 16, 20, 22, 23 and 24 should be allowable over Freeny. Since claims 2-8, 10-15, 17, 21 and 41-43 depend from one of claims 1, 9, 16, and 20, claims 2-8, 10-15, and 21 and 41-43 should also be allowable over Freeny.

Accordingly, it is submitted that the rejection of claims 1 – 17, 20 –24, and 41 – 43 based upon 35 U.S.C. §102(b) has been overcome by the present remarks and withdrawal thereof is respectfully requested.

Claim 34

In particular, the method of managing the sale of an article from a product distributor of claim 34, as amended herein, includes:

> *receiving payment* corresponding to a selling price for the article, the payment being received by a distributor of the article from a buyer of the article,
>
> *wherein* the article has been manufactured prior to receipt of payment;

> *determining* a royalty due to a licensor of the article, based on the selling price of the article;
>
> *transmitting*, from the distributor to a manufacturer of the article, portions of the selling price payment corresponding to a royalty and a licensee margin portion of the selling price, wherein the manufacturer is a licensee of the article; and
>
> *transmitting*, from the licensee to the licensor, payment corresponding to the royalty, upon a sale the article to the customer.

(emphasis added)

Accordingly, in one aspect of claim 34, the method of managing the sale of an article includes receiving payment corresponding to a selling price for the article, the payment being received by a distributor of the article from a buyer of the article, wherein the article has been manufactured prior to receipt of payment.

By contrast, Freeny describes a customer entering payment information for an article at a point-of-sale location, then having the information sent directly to the owner of the information, before a sale of a recording (or article) is authorized. *Freeny, col. 2, line 66 to col. 3, line 24.* In other words, Freeny discloses manufacturing the articles for sale after the owner of the information has accepted the order, received payment, and authorized reproduction of the articles. *See Freeny, col. 3, lines 25-39.* Therefore, Freeny fails to teach or suggest a method of managing the sale of an article that includes receiving payment corresponding to a selling price for the article . . . wherein the article has been manufactured prior to receipt of payment. Therefore, Freeny fails to teach or suggest all the limitations recited in claim 34.

Based on the foregoing discussion, it is submitted that claim 34 should be allowable over Freeny. Independent claims 40 and 46 closely parallel, and contain substantially similar limitations as those recited in, independent claim 34, and therefore should be allowable over

Freeny. Since claims 35-37 depend from claim 34, claims 35-37 should also be allowable over Freeny.

Accordingly, it is submitted that the rejection of claims 34 – 37, 40 and 46 based upon 35 U.S.C. §102(b) has been overcome by the present remarks and withdrawal thereof is respectfully requested.

§ 103 Rejection of Claims 18 and 19

In Section 6 of the Office Action, claims 18 and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Freeny in view of Official Notice (regarding well within the skill; hereinafter referred to as "ON1").

Based on the foregoing discussion regarding claim 16, and since claims 17 and 18 depend from claim 16, it is maintained that claims 17 and 18 should be allowable over Freeny. Further, since ON1 is merely cited for the teaching that "it is well within the skill to ascertain that delivering material objects requires at least a delivery address, means of delivery, and means to record delivery instructions as requested by the consumer," it is maintained that Freeny and ON1, individually or in combination, fail to teach or suggest all the limitations of claims 17 and 18.

Accordingly, it is submitted that the rejection of claims 18 and 19 based upon 35 U.S.C. §103(a) has been overcome by the present remarks and withdrawal thereof is respectfully requested.

§ 103 Rejection of Claims 25 – 33

In Section 7 of the Office Action, claims 25 – 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Freeny in view of Rembert (U.S. Patent No. 5,101,352; hereinafter referred to as "Rembert").

Based on the foregoing discussion regarding claim 1, and since independent claims 25 and 29 closely parallel, and include substantially similar limitations as those recited in, claim 1, it is maintained that claims 25 and 29 should be allowable over Freeny. Further, since Rembert is merely cited for teaching "material requirements planning (MRP) for distributors, manufacturers and job shops . . . . MRP as a technique for determining the net time phased requirement . . . , " and "a system and method that accomodates a wide variety of product options," along with claim 25's receiver unit, order-accepting unit, stock-article calculation unit, and stock balance calculation unit, it is maintained that Freeny and Rembert, individually or in combination, fail to teach or suggest claims 25 and 29. Since claims 26-28 and 30-33 depend from claims 25 and 29, respectively, claims 26-28 and 30-33 should be allowable over Freeny and Rembert.

Accordingly, it is submitted that the rejection of claims 25 – 33 based upon 35 U.S.C. §103(a) has been overcome by the present remarks and withdrawal thereof is respectfully requested.

§ 103 Rejection of Claims 38, 44, and 47 – 52

In Section 8 of the Office Action, claims 38, 44, and 47 – 52 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Freeny in view of Official Notice (old and well known; hereinafter referred to as "ON2").

Based on the foregoing discussion regarding claims 1, 34 and 46, and since claims 38, 44, and 47-52 depend from one of claims 1, 34 and 46, claims 38, 44, and 47-52 should be allowable

over Freeny. Further, since ON2 was merely cited for teaching that it is old and well known in the art to describe cost relationships of a manufactured item or derive the cost of a manufactured item in terms of component costs, margins and royalties, it is maintained that Freeny and ON2, individually or in combination, fail to disclose or teach all the limitations of claims 38, 44, and 47-52.

Accordingly, it is submitted that the rejection of claims 38, 44, and 47 – 52 based upon 35 U.S.C. §103(a) has been overcome by the present remarks and withdrawal thereof is respectfully requested.

§ 103 Rejection of Claims 39 and 45

In Section 9 of the Office Action, claims 39 and 45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Freeny and ON2, as applied to claims 38 and 44, further in view of Rembert.

Based on the foregoing discussion regarding claims 1 and 34, and since claims 39 and 45 depend from one of claims 1 and 34, claims 39 and 44 should be allowable over Freeny. Further, Freeny and ON2, in combination, were merely cited for teaching " a) blank media, blank media having a cost without value added cost, b) manufacturing a retail material object containing component costs and value add costs, and c) manufacturing a material object customized for the individual customer." Further, Rembert was merely cited for teaching "material requirements planning (MRP) for distributors, manufacturers and job shops . . . . MRP as a technique for determining the net time phased requirement . . . ," and "a system and method that accomodates a wide variety of product options." Therefore, it is maintained that Freeny, ON2 and Rembert, individually or in combination, fail to disclose or teach all the limitations of claims 39 and 45.

Accordingly, it is submitted that the rejection of claims 39 and 45 based upon 35 U.S.C. §103(a) has been overcome by the present remarks and withdrawal thereof is respectfully requested.

Conclusion

In view of the foregoing, entry of this amendment, and the allowance of this application with claims 1-52 are respectfully solicited.

In regard to the claims amended herein and throughout the prosecution of this application, it is submitted that these claims, as originally presented, are patentably distinct over the prior art of record, and that these claims were in full compliance with the requirements of 35 U.S.C. §112. Changes that have been made to these claims were not made for the purpose of patentability within the meaning of 35 U.S.C. §§101, 102, 103 or 112. Rather, these changes were made simply for clarification and to round out the scope of protection to which Applicant is entitled.

In the event that additional cooperation in this case may be helpful to complete its prosecution, the Examiner is cordially invited to contact Applicant's representative at the telephone number written below.

The Commissioner is hereby authorized to charge any insufficient fees or credit any overpayment associated with the above-identified application to Deposit Account 50-0320.

Respectfully submitted,

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